

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Conlin Strawberry Water Company, Inc., a California corporation (U-177-W), for Authority to Sell and Del Oro Water Co., Inc. (U-61-W), for Authority to Buy, the Conlin Strawberry Water Company Water System in Tuolumne County.

Application 05-12-001
(Filed December 2, 2005)

Investigation on the Commission's Own Motion into the Operations and Practices of the Conlin-Strawberry Water Co. Inc. (U-177-W), and its Owner/Operator, Danny T. Conlin; Notice of Opportunity for Hearing; and Order to Show Cause Why the Commission Should Not Petition the Superior Court for a Receiver to Assume Possession and Operation of the Conlin-Strawberry Water Co. Inc. pursuant to the California Public Utilities Code Section 855.

Investigation 03-10-038
(Filed October 16, 2003)

**ALL PARTIES' MOTION FOR COMMISSION ORDER APPROVING
AND ADOPTING PROPOSED SETTLEMENT**

I. INTRODUCTION

The following Parties move for a Commission order approving and adopting the attached, proposed Settlement Agreement (Settlement). This Motion is made on the ground that the Settlement is reasonable, consistent with the law, and in the interests of the ratepayers. The Parties are:

- The Conlin Strawberry Water Co. (CSWC) and its sole owner, Danny Conlin;
- The Del Oro Water Co. (DOWC); and

- The Division of Ratepayer Advocates (DRA) of the California Public Utilities Commission (Commission).¹

II. BACKGROUND

On July 21, 2005, the Commission issued D.05-07-010 which found that CSWC and Danny Conlin are unable or unwilling to adequately serve its ratepayers and that CSWC has been actually or effectively abandoned by its owner or is unresponsive to the Commission rules or orders. Accordingly, in Ordering Paragraph 1 of D.05-07-010, the Commission directed the following:

The General Counsel shall proceed immediately to petition the Superior Court, Tuolumne County, for the appointment of a receiver to assume possession of Conlin-Strawberry Water Company Inc. (Conlin-Strawberry or company) and all its assets and to operate the water system upon such terms and conditions as the court shall prescribe.

On August, 22, 2005, the Respondents filed an Application for Rehearing and on October 18, 2005, a Petition for Modification, of D. 05-07-010.

On November 1, 2005, the Commission's General Counsel filed in the Tuolumne County Superior Court (Court) an application for appointment of a receiver to assume possession and operation of CSWC.² On December 5, 2005, the Court continued the matter until January 9, 2006, pending *inter alia* the Commission issuing a decision on the Respondents' Rehearing Application. That matter has now been continued to May 1, 2006.

On December 2, 2005, the Applicants filed for Commission authority to sell CSWC to DOWC. On January 5, 2006, DRA protested that Application. An executed "Agreement to Purchase and Sale of Assets" (APSA), dated as of July 20, 2005, was included with the Application.

¹ Hereafter CSWC and Danny Conlin are referred to as the "Respondents," and DOWC and CSWC, as the "Applicants."

² Tuolumne Cnty. Sup. Ct., Civ. Law and Motn Case docket no. CV 51675, filed Nov. 1, 2005.

After an all day negotiation facilitated by ALJ Maribeth Bushey in late January 2006, the Parties agreed to a preliminary list of terms and conditions to be subsequently developed into a written Settlement. Further pursuant to a Commission Ruling dated February 2, 2006, the Parties filed on February 17, 2006, a joint stipulation providing for DOWC to assume operation and management of CSWC by March 1, 2006, which incorporated by reference the Applicants' "Operations and Maintenance Agreement" (O&M Agreement) executed and dated as of December 15, 2005, and is attached hereto as Exhibit 1.

The Parties continued negotiating, drafting, and reviewing the terms and conditions of a settlement throughout late February and most of March 2006. Towards the end of March 2006, the Parties agreed to the attached Settlement. On March 31, 2006, CSWC and Danny Conlin's attorney of record, Thomas MacBride Jr., executed the Settlement. On or about April 3, 2006, DOWC and DRA signed the Settlement.

III. THE SETTLEMENT'S TERMS AND CONDITIONS

The summary below highlights some of the most salient terms and conditions of the Settlement and is not meant in any manner to substitute for the actual and specific text of the Settlement. The Settlement incorporates, amends, and supplements the APSA to provide for the following:

DOWC will purchase the assets of CSWC for \$110,000, the estimated value of CSWC present rate base. DOWC is not required to obtain Commission approval of a rate case increase before escrow closes. However, as soon as practical after the escrow, DOWC will file for a general rate increase not to exceed 40% of the present rate levels.

CSWC and Danny Conlin agree to transfer all of their water rights to DOWC at the close of escrow. DOWC will obtain any other water rights that may be necessary. DOWC will also retain an engineering firm to prepare an engineering study and capital improvement plan for the CSWC water system.

In lieu of a DRA audit, the Parties have agreed that the purchase price of \$110,000 will be offset by the following specified amounts of money which are deemed as owed for the benefit of the ratepayers:

- \$48,902.95, which DOWC will deposit in the SWDBL surcharge trust account to remedy a shortfall of the same amount caused by a lack of past SDWBL surcharge deposits;
- \$13,165.13, which DOWC will pay to the Tuolumne County to satisfy past and delinquent property taxes owed on the real property of CSWC; and
- \$11,229.80, which DOWC will withhold from the purchase price as the sum of flat rate revenues collected by CSWC for the quarter ending March 31, 2006, and owed to DOWC for management of the CSWC water system.³

DOWC will assume the CSWC's responsibility for complying with State and Federal regulatory rules and regulations, e.g., the Department of Health Services. The SPOA and DOWC will meet and confer to discuss the operation and management of the water system.

When (1) the Commission approves and adopts the Settlement and (2) escrow on the sale of CSWC to DOWC closes, the Respondents will move for withdrawal and/or dismissal with prejudice of their application for rehearing and petition for modification. Also, DRA will withdraw its Tuolumne County Superior Court application for an order appointing a receiver. The Settlement provides for enforcement of the Settlement and requires that before bringing an action in any forum outside of the Commission, the Party must first exhaust its administrative remedies at the Commission. The Settlement is subject to approval and adoption by the Commission.

IV. ARGUMENTS AND AUTHORITIES

A. The Settlement is Reasonable

Pursuant to Rule 51.1(e), the Commission will not approve settlements, whether contested or uncontested, unless the settlement is reasonable in light of the whole record,

³ See *Settlement*, sec. 1.7.3, at p. 5, for specific details of this term and condition.

consistent with law, and in the ratepayers' interest. In the *Southern California Gas Co.* decision,⁴ the Commission held that the parties' evaluation should carry material weight in the Commission's review of a settlement.

The Parties have determined that the Settlement will achieve the goals of D. 05-07-010 at a significant savings in time, resources, and expense for all the Parties, as compared with having a court - receiver sell CSWC. Some of the Commission's objectives are to replace the Respondents with someone who would be willing to serve the ratepayers and operate and manage the water system in compliance with Commission and other regulatory agencies' rules and regulations.

The Settlement fulfills these Commission goals. The Respondents are voluntarily agreeing to sell CSWC to DOWC. DOWC has committed in the Settlement to comply with the Commission and other regulatory agencies' rules and regulations. DOWC also will periodically meet and confer with the members of SPOA and has agreed to retain an engineering firm to evaluate and design a capital improvement plan for the water system. These are objectives that the Commission has sought to enforce since 1995 or earlier. Therefore the Parties believe the Settlement is reasonable and should be adopted by the Commission.

If the Commission were to proceed with a court-appointed receiver to sell CSWC for the best offer, the cost to the ratepayers is estimated as approximately \$50,000 or more. Further, the receiver would have to obtain court approval of any proposed sale and an interested party could challenge the sale in a court hearing. The Parties' viewed this option as presenting more risks and uncertainties, greater expenses to the ratepayers, and taking more time than reaching a settlement. Therefore, the Parties urge the Commission to approve and adopt the Settlement as more reasonable than the other available option, i.e., proceeding with a receiver's sale of CSWC.

⁴ *South. Calif. Gas Co.*, D.00-09-034, 2000 Cal. PUC LEXIS 694, at p. *29 & *31.

B. Consistent with the Law

All the Parties have entered into this Settlement voluntarily and upon review and advice by their respective legal counsels or technical staff. The Commission's approval and adoption of the Settlement will not constitute an admission or concession by any Party regarding any fact or matter of law in dispute in this proceeding. The Settlement is not precedent or policy of any kind for any purpose in any current or future proceedings. The Parties therefore believe the Settlement is consistent with the law.

C. In the Public's Interests

The Settlement is in the ratepayers' interest because first, the Parties have agreed to transfer CSWC to DOWC for approximately the value of the rate base, \$110,000. In effect, the revenue requirements for the ratepayers will remain level with past recovery levels. Although a number of capital improvements will be necessary, DOWC has agreed to raise rates no more than 40% over current rates in future general rate case application. This will avoid causing the ratepayers "rate shock." Further, the Respondents have agreed to offset as a credit against the purchase price of \$110,000, DOWC's remittance of approximately \$49,000 in repayment of the SDWBL loan and of approximately \$13,165 to the Tuolumne County for outstanding property taxes. The Respondents are also willing to waive approximately \$11,230 of the purchase price for the amount of flat rate revenues that were collected prior to DOWC's management. These facts show the Settlement is beneficial to the ratepayers, which the Commission should therefore approve and adopt.

V. CONCLUSION

It is conjectural whether a receiver's sale of CSWC would have resulted in higher or lower sales price. Moreover, it is undeterminable whether the ratepayers would have realized any greater or lesser benefits even if CSWC were sold for more than \$110,000. In other words, the Parties concluded that the proposed Settlement provides a more foreseeable and cost effective option, involving less uncertainties and risks than a

receiver's sale. The Parties therefore ask the Commission to approve and adopt this Settlement.

Respectfully submitted,

Dated: 4/10/06

/s/ CLEVELAND W. LEE

Cleveland W. Lee
Attorney for the Division
of Ratepayer Advocates

Dated: 4/06/06

/s/ THOMAS J. MACBRIDE JR.

Thomas J. MacBride Jr.
Attorney for the Conlin Strawberry
Water Co. and Danny Conlin

Dated: 4/06/06

/s/ ROBERT FORTINO

Robert Fortino, President
Del Oro Water Co.

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of “**ALL PARTIES’
MOTION FOR COMMISSION ORDER APPROVING AND ADOPTING
PROPOSED SETTLEMENT**” in **A.05-12-001** and **I.03-10-038** by using the following
service:

[**X**] **E-Mail Service:** sending the entire document as an attachment to all known
parties of record who provided electronic mail addresses.

[] **U.S. Mail Service:** mailing by first-class mail with postage prepaid to all
known parties of record who did not provide electronic mail addresses.

Executed on **April 11, 2006** at San Francisco, California.

/s/ Rebecca Rojo
Rebecca Rojo

N O T I C E

Parties should notify the Process Office, Public Utilities
Commission, 505 Van Ness Avenue, Room 2000, San Francisco,
CA 94102, of any change of address and/or e-mail address to
insure that they continue to receive documents. You must indicate
the proceeding number on the service list on which your name
appears.
